

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4918 OF 2016

The Municipal Corporation, Jalgaon.
Through it's Commissioner, Jalgaon.

...PETITIONER

-VERSUS-

Shri Chandrakant Yashwant Chaudhari,
Age : 42 years, Occupation : Service,
C/o Shri Gajanan Sonar,
Sambaji Nagar, Near Datta Mandir,
Tal. & Dist.Jalgaon.

...RESPONDENT

...

Advocate for Petitioner : Shri Patil Shrikant S.
Advocate for Respondent : Shri Patil Vinod Prakash.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd July, 2016

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 I have heard the submissions of the learned Advocates for
quite sometime.

3 It is the case of the Petitioner that the Respondent was

engaged as a Safai Kamgar only on daily wages and whenever the work was available, in between 1991 to 1992. He was never appointed as a Class-IV employee on the rolls of the Petitioner Corporation. After he was disengaged from such temporary work, he did not approach any authority for a period of almost 20 years. He raised an industrial dispute in 2012 and by the order of the Deputy Commissioner of Labour dated 23.07.2012, the matter was referred to the Labour Court for adjudication under Section 2(A) r/w Sections 10 and 12 of the Industrial Disputes Act, 1947.

4 The learned Advocate for the Petitioner submits that the Respondent claimed reinstatement with continuity and full back-wages from the imaginary date 01.12.1992 when he claims, he was orally terminated. Unfortunately for the Petitioner, though an appearance was caused, the concerned Advocate neither filed the Written Statement nor did he participate in the proceedings. Consequentially, the impugned award is virtually ex-parte and primarily based on the failure of the Petitioner to participate in the hearing of the matter. As a result of which, the Labour Court considered the evidence of the Respondent on the basis that it was unchallenged.

5 The learned Advocate for the Respondent/ Employee has

strenuously supported the impugned award. It is contended that the Respondent was under an assurance that on some day he will again get employment in the Petitioner Corporation. He waited for years together hoping that he will get employment. Being a labourer and living in abject poverty, he could not approach the Court as he would not have sustained the expenditure. Eventually, when he realized that he was not considered by the Petitioner Corporation for any employment, he raised an industrial dispute in 2012.

6 It is further submitted that for three years, the reference proceedings were being adjudicated upon. The Petitioner did not appear and therefore, did not lead any evidence. The Labour Court has deprived the Respondent of back-wages till 16.12.2011 and has been granted continuity of service and reinstatement. In fact, the Respondent/Employee is entitled for back-wages and hence, this petition be dismissed with costs.

7 It is further submitted by the Respondent that juniors are retained in service and the Respondent has been retrenched without compliance of the Industrial Disputes Act, 1947.

8 I find from the record available that the reference has been

allowed without there being any documentary evidence on record. Barring the justification statements filed pursuant to the issuance of the approach notice and the statement of claim, there was no evidence to prove that the Respondent had worked from 1991 till 01.12.1992. Evidence of completion of 240 days is required to be placed on record. It is trite law that the burden of proving completion of 240 days lies on the employee.

9 I also find that besides the affidavit in lieu of examination-in-chief, there was nothing before the Labour Court to consider whether, the Respondent had factually worked for two years. In this backdrop, the impugned award deserves to be set aside.

10 It, however, cannot be ignored that the Respondent has been granted reinstatement with continuity in service. Section 17-B of the Industrial Disputes Act, 1947 entitles the employee to monthly wages till this petition is decided. The impugned award is dated 20.06.2015 and must have been published in a couple of weeks thereafter by the Labour Court. The writ petition is filed on 22.04.2016.

11 In the light of the above, while allowing this petition, I deem it proper to grant compensation to the Respondent considering the view taken by the Honourable Apex Court in the following four matters:-

- (a) *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal, [2013 LLR 1009];*
- (b) *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh, [(2013) 5 SCC 136];*
- (c) *BSNL Vs. Man Singh, (2012) 1 SCC 558; and*
- (d) *Jagbir Singh Vs. Haryana State Agriculture Marketing Board, [(2009) 15 SCC 327].*

12 As such, this Writ Petition is partly allowed. The impugned award dated 20.06.2015 is modified and the Petitioner Corporation is directed to pay compensation of Rs.50,000/- (Rupees Fifty Thousand) to the Respondent/ Employee for having worked for two years and in lieu of reinstatement, continuity of service and all benefits incidental to reinstatement in service. The amount as directed above shall be paid to the Respondent within a period of TWELVE WEEKS from today, failing which, interest @ 6% p.a. shall be paid.

13 Rule is made partly absolute in the above terms.